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SENATE BILL 717

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO FINANCE; CREATING AN EXEMPTION FROM THE  
GOVERNMENTAL GROSS RECEIPTS TAX FOR UNIVERSITY RECEIPTS FROM  
THE IMPOSITION OF AN ATHLETIC FACILITY SURCHARGE; ENACTING THE  
UNIVERSITY ATHLETIC FACILITY FUNDING ACT; PERMITTING CERTAIN  
UNIVERSITIES TO ISSUE REVENUE BONDS; AUTHORIZING CERTAIN  
UNIVERSITIES TO IMPOSE A SURCHARGE ON REVENUES ARISING FROM  
ACTIVITIES AT UNIVERSITY ATHLETIC FACILITIES; MAKING AN  
APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Gross Receipts and  
Compensating Tax Act is enacted to read:

"[NEW MATERIAL] EXEMPTION--GROSS RECEIPTS TAX AND  
GOVERNMENTAL GROSS RECEIPTS TAX--ATHLETIC FACILITY  
SURCHARGE.--Exempted from the gross receipts tax and from the

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1 governmental gross receipts tax are the receipts of a  
2 university from an athletic facility surcharge imposed pursuant  
3 to the University Athletic Facility Funding Act."

4 Section 2. [NEW MATERIAL] SHORT TITLE.--Sections 2  
5 through 11 of this act may be cited as the "University Athletic  
6 Facility Funding Act".

7 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
8 University Athletic Facility Funding Act:

9 A. "athletic facility revenues" means rentals,  
10 receipts, fees or other charges imposed by and paid to a  
11 university for the rights to use, operate or manage a  
12 university athletic facility by any person;

13 B. "athletic facility surcharge" means a surcharge  
14 to be included in each vendor contract on tickets, parking,  
15 souvenirs, concessions, programs, advertising, merchandise,  
16 corporate suites or boxes, broadcast revenues and all other  
17 products or services sold at or related to a university  
18 athletic facility or related to activities occurring at a  
19 university athletic facility;

20 C. "board" means the board of regents of a  
21 university;

22 D. "bonds" means athletic facility revenue bonds  
23 issued by a university to pay for some or all of the costs of  
24 designing, purchasing, constructing, remodeling,  
25 rehabilitating, renovating, improving, equipping and furnishing

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1 a university athletic facility;

2 E. "president" means the president of a university  
3 or a person designated by the president of a university;

4 F. "university" means a four-year post-secondary  
5 educational institution confirmed by Article 12, Section 11 of  
6 the constitution of New Mexico and the main campus of which is  
7 located in a class A county;

8 G. "university athletic facility" means an indoor  
9 or outdoor athletic facility, including buildings and related  
10 improvements, primarily designed and intended for university  
11 sporting events, but also available for non-university sporting  
12 events and university and community cultural, educational and  
13 entertainment events;

14 H. "vendor" means every person, corporation,  
15 partnership or other entity, including a division or department  
16 of a university, providing products or services sold at or  
17 related to a university athletic facility; and

18 I. "vendor contract" means a written arrangement  
19 between a university and a vendor pursuant to which the vendor  
20 provides products or services sold at or related to the  
21 university athletic facility.

22 Section 4. [NEW MATERIAL] ISSUANCE OF BONDS.--

23 A. With the approval of the higher education  
24 department and the state board of finance, pursuant to a  
25 resolution of the board of regents, a university that has

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1 imposed an athletic facility surcharge may issue athletic  
2 facility revenue bonds to pay for some or all of the costs of  
3 designing, purchasing, constructing, remodeling, renovating,  
4 rehabilitating, improving, equipping or furnishing a university  
5 athletic facility that has a seating capacity of twelve  
6 thousand or more.

7 B. The bonds shall bear interest at a rate or rates  
8 as authorized in the Public Securities Act, and the first  
9 interest payment may be for any period authorized in the Public  
10 Securities Act.

11 C. The bonds shall be secured by athletic facility  
12 revenues and athletic facility surcharge receipts.

13 D. The university shall establish an "athletic  
14 facility bonding fund" for deposit of all athletic facility  
15 revenues and athletic facility surcharge proceeds. Money in  
16 the fund may be used to pay:

17 (1) payments of principal, interest or prior  
18 redemption premiums due in connection with, and any other  
19 charges pertaining to, the bonds, including payments into any  
20 sinking fund or reserve fund required by the bond resolution;

21 (2) costs of operating a university athletic  
22 facility during the life of the bonds, provided that no such  
23 costs shall be paid if there are current payments due pursuant  
24 to Paragraph (1) of this subsection;

25 (3) costs of constructing, renovating,

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1 equipping, maintaining or improving a university athletic  
2 facility, provided that no such costs shall be paid if there  
3 are current payments due pursuant to Paragraph (1) of this  
4 subsection; or

5 (4) costs of collecting or administering the  
6 athletic facility surcharge, provided that no such costs shall  
7 be paid if there are current payments due pursuant to Paragraph  
8 (1) of this subsection.

9 E. Bonds issued pursuant to the University Athletic  
10 Facility Funding Act shall be payable solely from the athletic  
11 facility bonding fund and do not create an obligation or  
12 indebtedness of the state within the meaning of any  
13 constitutional provision. A breach of any contractual  
14 obligation incurred pursuant to that act shall not impose a  
15 pecuniary liability or a charge upon the general credit or  
16 taxing power of the state, and the bonds are not general  
17 obligations for which the state's full faith and credit is  
18 pledged.

19 F. The state does hereby pledge that the athletic  
20 facility bonding fund shall be used only for the purposes  
21 specified in this section and pledged first to pay the debt  
22 service on the bonds. The state further pledges that any law  
23 authorizing the imposition of the athletic facility surcharge  
24 and the dedication of revenues to the fund shall not be amended  
25 or repealed or otherwise modified so as to impair the bonds to

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1 which the fund is dedicated as provided in this section. The  
2 university shall not repeal, amend or otherwise modify the bond  
3 resolution or the resolution imposing the athletic facility  
4 surcharge in such a manner that adversely affects or impairs  
5 the athletic facility surcharge or any bonds secured by a  
6 pledge of the athletic facility revenues and athletic facility  
7 surcharge receipts unless the bonds have been paid in full or  
8 provisions have been made for full payment.

9 Section 5. [NEW MATERIAL] ATHLETIC FACILITY REVENUE  
10 BONDS--FULL AUTHORITY TO ISSUE--BONDS ARE LEGAL INVESTMENTS.--

11 A. The University Athletic Facility Bonding Act  
12 shall, without reference to any other act of the legislature,  
13 be full authority for the issuance and sale of athletic  
14 facility revenue bonds, which bonds shall have all the  
15 qualities of investment securities under the Uniform Commercial  
16 Code and shall not be invalid for any irregularity or defect or  
17 be contestable in the hands of bona fide purchasers or holders  
18 of the bonds for value.

19 B. Athletic facility revenue bonds are legal  
20 investments for any person or board charged with the investment  
21 of any public funds and are acceptable as security for any  
22 deposit of public money.

23 Section 6. [NEW MATERIAL] BONDS TAX EXEMPT.--All athletic  
24 facility revenue bonds shall be exempt from taxation by the  
25 state or any of its political subdivisions.

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1           Section 7. [NEW MATERIAL] AUTHORIZATION OF SURCHARGE AND  
2 OTHER FEES--USE OF PROCEEDS--TRANSFER.--

3           A. The board may establish by resolution an  
4 athletic facility surcharge of not less than five percent of  
5 the revenues received by a vendor pursuant to each vendor  
6 contract entered into by the university.

7           B. The athletic facility surcharge shall be imposed  
8 only for the period necessary for payment of principal and  
9 interest on the bonds issued to accomplish the purpose for  
10 which the revenue is dedicated, but the period shall not exceed  
11 thirty years from the date of the resolution imposing the  
12 surcharge.

13           C. A university that has established an athletic  
14 facility surcharge shall include the surcharge in the terms of  
15 each vendor contract into which it enters.

16           D. A university may establish charges and fees  
17 deemed necessary by the board or the president for the use,  
18 operation or management of a university athletic facility by a  
19 person other than the university.

20           Section 8. [NEW MATERIAL] COLLECTION OF ATHLETIC FACILITY  
21 SURCHARGE--REMITTANCE TO UNIVERSITY.--

22           A. Upon the sale of a product or service subject to  
23 the athletic facility surcharge, a vendor shall collect the  
24 athletic facility surcharge from the purchaser of that product  
25 or service on behalf of the university and shall act as a

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1 trustee for the surcharge receipts. A purchaser of a product  
2 or service subject to the athletic facility surcharge shall be  
3 charged separately for the athletic facility surcharge from the  
4 cost of the product or service, or the vendor shall institute  
5 accounting controls or procedures sufficient to identify the  
6 amount of the surcharge owed to a university for each sale,  
7 transaction or exchange subject to the surcharge. Receipts  
8 from the athletic facility surcharge shall be remitted by a  
9 vendor to the president no later than the tenth day of the  
10 month following the collection of the surcharge.

11 B. The president shall deposit university athletic  
12 facility revenues and athletic facility surcharge receipts into  
13 the athletic facility bonding fund and act as trustee of the  
14 revenue on behalf of bondholders pursuant to the University  
15 Athletic Facility Funding Act so long as any bonds remain  
16 outstanding.

17 Section 9. [NEW MATERIAL] AUDITS.--The board shall  
18 provide by resolution a method to audit or otherwise ensure  
19 that vendors subject to the athletic facility surcharge collect  
20 and remit to the president the full amount of the surcharge  
21 receipts due to the university.

22 Section 10. [NEW MATERIAL] ENFORCEMENT--PENALTIES.--

23 A. An action to enforce the imposition and  
24 collection of an athletic facility surcharge by a vendor may be  
25 brought by a university.

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B. A district court may issue an appropriate judgment, order or remedy to enforce the provisions of a vendor contract.

C. A judgment issued by a district court requiring athletic facility surcharge receipts to be paid to a university by a vendor shall also award interest at an annual rate of twelve percent on past due amounts, attorney fees and costs to a university.

Section 11. [NEW MATERIAL] LIBERAL INTERPRETATION.--The University Athletic Facility Funding Act shall be liberally construed to carry out its purpose.

Section 12. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.